ORIGINAL

Barry Lamon
E-08345; B4-208
P.O. BOX 290066
Represa, CA 95671-0066

Plaintiff, In Prose

FILED
MAR 18 2010
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BARRY LAMON,
Plaintiff,
V.
LYTLE, et al.,
Defendants.

Case No. 2:03-CV-00423-AK (P)

PLAINTIFF'S TRIAL BRIEF

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action seeking relief under 42 U.S.C. §1983. Pursuant to court order (Doc. 218), Plaintiff submits the following trial brief (Local Rule 16-285):

I.

STATEMENT OF FACTS

Plaintiff, Barry Lamon (E-08345), is a State Prisoner in the custody of the California Department of Corrections and Rehabilitation (hereafter "CDCR"). At all times relevant to this complaint, Plaintiff was housed at the California State Prison-Sacramento ("CSP-SAC") and was a patient in the CDCR and CSP-SAC Mental Health Services Delivery System ("MHSDS"). Prior to August 14, 2002, Plaintiff had a well-documented history of previous suicide attempts, and CSP-SAC Prison Staff psychiatrists had issued a written notice to all Prison staff, including the defendants herein, that Plaintiff was considered a high risk for suicide attempts. Plaintiff's Complaint alleges that, on August 14, 2002, Plaintiff informed Defendants Lytle, Murphy, Loredo, and Scicluna, that he wanted to see his psychiatric case clinician because he felt suicidal, and Defendants were deliberately indifferent to the serious risk posed to Plaintiff's health and told Plaintiff to: "Go ahead, Do us the Fucking Favor." Plaintiff then attempted suicide by setting his cell afire, thereby sustaining the injuries and damages alleged in this Complaint.

Specifically, Plaintiff alleges that on August 14, 2002, Defendant Scicluna transferred all of Plaintiff's property from one cell to another as a racially-charged convenience-move designed to prevent the Plaintiff from witnessing and complaining about Scicluna habitually giving extra food and other favorable treatment to Plaintiff's neighbor who was Caucasian, as is Scicluna, while Plaintiff is African.

When the Plaintiff balked at the move and demanded to speak with a Sergeant, Defendants Lytle, Murphy, and Scicluna, physically overwhelmed me, shackled me hand and feet, and dragged me from the housing area to a holding-cage in front of their offices, where the left me for more than two hours, with the shackles applied so tightly that my hands and feet were cut, swollen, and bleeding.

Plaintiff constantly complained to defendants Lytle, Murphy, and Scicluna, over the two hour time-span, that the pain was unbearable but the refused to adjust the shackles and only made racist, derogatory, and threatening comments. As the physical pain became worse, Plaintiff informed defendants Lytle, Murphy, and Scicluna, that I was feeling suicidal and wanted to speak with my assigned psychiatric clinician and they sadistically refused to summons her, Defendant Loredo arrived during Plaintiff's Seclusion in the holding-Cage and was breifed by the other defendants about the cell move, Plaintiffs Complaints of Physical Pain Caused by the Shackles, and that Plaintiff had been trying to get his Mental health Clinician invloved all morning.

Following the two-hour ordeal in the holding-Cage, Defendants Lytle, Murphy, Loredo, Sciclunа, and others, then Physically dragged the Plaintiff to the Cell to which defendant Scicluna initially wanted the Plaintiff moved, during which time the Plaintiff, again, Shouted to them that I was going to kill myself, at which time defendant Murphy Stated: "Go ahead, Do us the Fucking Favor," after which all said defendants walked away.

Approximately ten minutes after defendants Lytle, Murphy, and Scicluna deposited me in the Cell, defendant Loredo arrived at my Cell-Front and asked what I was doing, as I was building a mound of State Mattresses and Clothing in the Cell, at which time I said: "I'm building a Fire to kill myself, Just like I told you all I was going to do", to which defendant Loredo responded: "that won't get your cell back, that's only going to get you dead, so stop it and be a man." After this, Loredo and officer Sherburn also walked away.

The California Code of Regulations, Division 3, Title 15 (Cal. Cde. Regs. Tit. 15), Section 3365, Mandates that all Prisons under the stewardship of the Director of the CDCR must develope and implement adequate Plans and Operational Procedures for the response to, and Prevention of inmate Suicide. On August 14, 2002, the Suicide Prevention and Response Procedures in effect at CSP-SAC Mandated that defendants Lytle, Murphy, Loredo, and Scicluna handcuff me and Place me in a holding-cage and immediately notify a Psychiatric doctor that I Complained of having Suicidal ideations. The Procedures Further mandated that only a Psychiatric doctor has the authority to clear a inmate/Patient for release from the holding-cage and for return to his normally assigned housing unit and/or Placement into a hospital for enhanced mental health treatments and other suicide Preventive measures.

More than four hours after Plaintiff initially informed defendants Lytle, Murphy, and Scicluna that I was suicidal, and more than two hours after defendant Loredo was informed that I was suicidal. None of the defendants had implemented the CSP-SAC Plan and Procedures for the Response and Prevention of inmate suicide.

Plaintiff later attempted suicide on August 14, 2002, by setting my cell afire. The cell-move forced upon Plaintiff by defendants Lytle, Murphy, and Scicluna was racist and devoid of a legitimate Penological interest. The failure of defendants Lytle, Murphy, Loredo and Scicluna to implement the appropriate or adequate CSP-SAC Operational Plan and Procedure for the Response to, and the Prevention of Suicides was willful, sadistic, and done with deliberate indifference to the Prior knowledge they each Possessed of Plaintiff being a high risk of suicide attempt and the serious risk Posed to my health.

Plaintiff alleges the following injuries caused by defendants conduct: (1) Physical Pain and injuries to my wrist and ankles caused by the shackles; (2) Carbon Monoxide Poisoning resulting in headaches; (3) minor burns to Plaintiff's nostrils, throaght, and lungs; (4) Loss of Personal Property caused by resulting from the fire; (5) mental decompensation and stress; and (6) loss of Constitutional rights.

As to legal claims, Plaintiff alleges that defendants Lytle, Murpy, Loredo and Scicluna denied me adequate mental health treatment when they

Failed to Follow appropriate Prison Procedure For the response and Prevention of Suicides, thereby resulting in the subjection of Plaintiff to wanton and unnecessary infliction of Pain and Physical injury.

Plaintiff asserts a Claim under the Eighth Amendment.

II.

Admissions and Stipulations

Plaintiff offers to stipulate to the authenticity of California Department of Corrections and Rehabilitation (CDCR) documents, reserving the right to object to their relevance and admissibility on other grounds.

III.

Points of Law

A. Conditions of Confinement

The Eighth Amendment Prohibits Cruel and unusual Punishments and also imposes duties on Prison officials, who must Provide humane Conditions of Confinement to ensure that inmates receive adequate food, Clothing, Shelter, and Medical Care, and who must take reasonable measures to guarantee the Safety of inmates. Farmer v. Brennan, 511 U.S. 825, 832 (1994). Conditions of Confinement may, however, be harsh and restrictive. Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Nonetheless, Prison officials must Provide Prisoners with "Food, shelter, clothing, Sanitation, medical Care, and Personal Safety. Toussaint v. McCarthy, 801 F.2d 1080, 1107 (9th Cir. 1987). A Prison official violates the Eighth Amendment only when two requirements are met: (1) objectively, the officials acts or omissions must be so serious such that it results in the denial of The minimal Civilized measure of life's necessities; and (2) subjectively, the Prison official must have acted unnecessarily and wantonly for the Purpose of inflicting harm. Farmer v. Brennan, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a Prison official must have a "sufficiently culpable mind." see id.

Deliberate indifference to a Prisoners serious illness or injury, or risk of serious injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle v. Gamble, 429 U.S. 97, 105; see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental health needs. See Hoptowit v. Ray, 682 F. F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is sufficiently serious if the failure to treat a prisoner's condition could result in further significant injury or or the "...unnecessary and wanton infliction of pain." McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).

Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition is worthy of comment; (2) whether the condition significantly impacts the prisoner's daily activities; and (3) whether the condition is chronic and accompanied by substantial pain. see Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

The requirement of deliberate indifference is less stringent in medical needs cases than in other Eighth Amendment contexts because the responsibility to provide inmates with medical care does not generally conflict with competing penological concerns. See McGuckin, 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to decisions concerning medical needs. See Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir. 1989). The complete denial of medical attention may constitute deliberate indifference. See Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical treatment, or interference with medical treatment, may also constitute deliberate indifference. See Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also demonstrate that the day led to further injury. see McGuckin, 974 F.2d at 1060.

B. Causal Connection

Plaintiff must specifically allege the unlawful conduct of the Defendants. Vague and conclusory allegations concerning the involvement of official personnel in civil rights violations are not sufficient. Ivey v. Board of Regents of The

University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982); Jones v. Community Developement Agency, 73 F.2d 646, 649 (9th Cir. 1984).

Under 42 U.S.C. § 1983, there must be an actual connection or link between the actions of the defendant and the deprivation alleged to have been sufferred by the Plaintiff. See Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). A person "subjects" another to the deprivation of a Constitutional right within the meaning of the statute, if he does an affirmative act, participates in another's affirmative acts, or fails to perform an act which he is legally required to do that causes the claimed deprivation. Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). At a minimum, Plaintiff must show a causal connection between the alleged violation and the Defendants actions or inactions. The Defendants must be shown to be responsible for "setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the Constitutional injury." Johnson, 588 F.2d at 740, 743; See also Hansen v. Black, 885 F.2d 642, 645-46 (9th Cir. 1989).

C. De Minimus Injury:

Although the Eighth Amendment protects inmates against cruel and unusual punishment, Federal Courts may not interfere whenever prisoners are inconvenienced or suffer de minimis injuries. Hudson v. McMillian, 503 U.S. 1, 9-10 (1992).

Under the Prison Litigation Reform Act ("PLRA"), prisoners are barred from recovery for mental or emotional damages "without a prior showing of physical injury." 42 U.S.C. § 1997(e); Zehner v. Trigg, 133 F.3d 459 (7th Cir. 1997). In Oliver v. Keller, 289 F.3d 623, 630 (9th Cir. 2002), the Ninth Circuit joined these circuits in finding that section 1997 e(e) required a showing of more than a de minimis physical injury in order to recover compensatory damages for mental or emotional injury under the PLRA. However, prisoners need not prove a serious injury to establish an Eighth Amendment claim. Hudson

v. McMillian, 503 U.S. ___, 112 S.Ct. 995, 999 (1992). Additionally, State may Create a right or liberty interest... (Meachum v. Fano, 427 U.S. 215, 96 S.Ct. 2532, 49 L.Ed.2d 451 (1976)), where a State Law, Rule or regulation itself limits a State officials discretion. Hewitt v. Helms, 459 U.S. 460, 477 n.9, 103 S.Ct. 864, 74 L.Ed.2d 675 (1983); Hughes v. Rowe, 449 U.S. 5, 101 S.Ct. 173, 66 L.Ed.2d 163 (1980); Hendrix v. Faulkner, 525 F.Supp. 435 N.D. Ind. 1981).

In the State of California, except as otherwise Provided by Sections 855.8 and 856, Cal. Gov. Code, a Public official, and the Public entity where the official is acting within the scope of his employment, is Liable if the official knows or has reason to know that the Prisoner is in need of immediate Medical care and he fails to take reasonable action to summon Medical Care. See Cal. Gov. Code, Section 845.6 (2007). Within the Context of the California Department of Corrections and Rehabilitations ("CDCR") the Standard for a 'reasonable' response is Created by the Cal. Code Regs. Division 3, Title 15 (Tit. 15), §§ 3360 and 3365.

D. Qualified Immunity

Even if a Constitutional right has been Violated, Prison officials are entitled to Qualified immunity if they 'reasonably' beleive in good faith that their Conduct did not violate clearly established Federal Constitutional or Statutory law of which a reasonable Person would have known. White by White v. Pierce County, 797 F.2d 812, 816 (9th Cir. 1986); Procunier v. Navarette, 434 U.S. 555, 561-562 (1978); Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982); Anderson v. Creighton, 483 U.S. 635, 639 (1987); Smiddy v. Varney, 665 F.2d 261, 266 (9th Cir. 1981).

In Clement v. Gomez, 298 F.3d 898, 903 (9th Cir. 2002), the Ninth Circuit set forth a two-part analysis for Qualified immunity. First, the Court must determine whether the facts, taken in the light most favorable to the Plaintiff, show that the officers Conduct violated a Constitutional right. Id. If the Court agrees that no constitutional violation occurred, then the Qualified immunity analysis ends, and the claim fails. Id.

If, however, the Court finds that a constitutional violation occurred, the Court must next enquire whether the right was clearly established. Estate of Ford v. Ramirez-Palmer, 301 F.3d 1043, 1050 (9Th Cir. 2002). This is a two-part enquiry: (1) was the law governing the state official's conduct clearly established; and (2) under that law could a reasonable state official have beleived his conduct was lawful? Id. Citing Jeffers v. Gomez, 267 F.3d 895, 910 (9Th Cir, 2001). "The relevant, dispositive inquiry in determining whether a right is clearly established is whether 'it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted.'" Id., Citing Saucier v. Katz, 533 U.S. 194, 202 (2001). If the Court beleives there was a Constitutional violation then the Plaintiff bears the burden of establishing that the Defendant violated a clearly established right. Davis v. Scherer, 468 U.S. 183, 187 (1984); Thompson v. Souza, 111 F.3d 694, 698 (9ThCir, 1997).

It is not sufficient that the general right alleged to have been violated was previously established. The contours of the right must also have been made sufficiently clear in a particularized sense that a reasonable official would have understood that his conduct was in violation of that right. Anderson v. Creighton, 483 U.S. at 640.

The Plaintiff is a well-documented participant in the CDCR Mental Health Delivery Services System with a history of suicide attempts. The Defendants were also warned by prison psychiatrists that Plaintiff was a high risk for a suicide attempt. Also, Defendants knew that Plaintiff had been greatly despondent and troubled by the April 10, 2002, passing of his step-mother. Too, Cal. Cde. Regs. Title 15, § 3365, mandates that all state prisons develope a plan and procedure for responding to and preventing suicides. CSP-SAC had such a plan which the Defendants [illegible] In this case each of the named defendants could not have and did not beleive that their conduct was lawful.

E. Punitive Damages:

In Smith v. Wade, 461 U.S. 30 (1989), the United States Supreme Court held that a Jury may be Permitted to assess Punitive damages in an action under 42 U.S.C. §1983, when the Defendants' conduct is shown to be Motivated by evil Motive or intent or when it involves reckless or callous indifference to the federally Protected rights of others.

F. Impeachment by Evidence of Prior Misconduct:

The verdict in this case will be decided by the Jury after consideration of each witness's credibility. Defendants, to Argue their Purported innocense, is expected to testify to their version of the events that occurred and to the basis for the belief that they responded reasonably to Plaintiff's need for Psychiatric Care.

Rule 406 of the Federal Rules of Evidence Provides that "evidence of the habit of a Person or of the routine Practice of an organization whether corrobborated or not and regardless of the Presence of eyewitnesses, is relevant to Prove that the conduct of the Person or organization on a particular occassion was in conformity with the habit or routine Practice. Accordingly, Plaintiff will seek to impeach the trial testimony of the Defendants with evidence of their Prior misconduct and abuse of Prisoners from their work-place disciplinary and greivance files and records.

Conclusion

When the applicable law is applied to the facts of this case, as supported by all the evidence Presented, the only reasonable decision will be for Judgment in favor of the Plaintiff.

Dated: March 12, 2010

Respectfully submitted,

[signature]

Barry Lamon
E-02345, B4-208
P.O. Box 290066
Represa, CA 95671-0066
Plaintiff, In Pro Se